(1)

Supreme Court, U.S.
FILED

99 822 OCT 07 1999

No. 99____ OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD D. SANDBERG, ALBERTA M. SANDBERG, DICK SANDBERG INSURANCE AGENCY, INC., a corporation,
Petitioners,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, et al.,
Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

PETITION FOR WRIT OF CERTIORARI

WILLIAM P. TEDARDS, JR.
1101 30TH Street, N.W.,
Suite 500
Washington, D.C. 20007
(202) 797-9135

JEFFREY T. WILBER*
44 Montgomery Street,
Suite 500
San Francisco, CA 94104
(415) 398-2235

* *Counsel of Record*

Counsel For Petitioners

October 7, 1999

---

5 1 R P

QUESTION PRESENTED FOR REVIEW

Whether the Ninth Circuit Court of Appeals invaded the constitutional right of the petitioner to a trial by jury, under Amendment VII of the Constitution of the United States of America, by substituting itself for the jury, passing upon the effect of the evidence, finding the facts involved in an issue, and rendering judgment thereon.

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The names of all the parties to the proceedings in the court whose judgment is sought to be reviewed appear in the caption of the case set forth immediately below. There are no other parent or subsidiary companies to be listed.

RICHARD D. SANDBERG;

ALBERTA M. SANDBERG;

DICK SANDBERG INSURANCE AGENCY, INC., a corporation,

Plaintiffs-Appellants,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a corporation;

STATE FARM FIRE AND CASUALTY COMPANY, a corporation;

STATE FARM LIFE INSURANCE COMPANY, a corporation;

STATE FARM GENERAL INSURANCE COMPANY, a corporation; and

DOES 1 through 100, inclusive

Defendants-Appellees.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

LIST OF PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS AND ORDERS BELOW 2

BASIS OF JURISDICTION 2

CONSTITUTIONAL PROVISIONS, STATUTES, RULES, AND REGULATIONS INVOLVED 2

STATEMENT OF THE CASE 3

RELEVANT FACTS AND COURSE OF PROCEEDINGS BELOW 4

REASONS FOR GRANTING THE WRIT 9

THE DECISION OF THE NINTH CIRCUIT HAS CLEARLY VIOLATED PETITIONERS' CONSTITUTIONAL RIGHT TO HAVE DISPUTED FACTUAL ISSUES IN A CIVIL CASE DECIDED BY A JURY 9

CONCLUSION 14

APPENDIX A 1a

APPENDIX B 7a

APPENDIX C 13a

APPENDIX D 26a

APPENDIX E 28a

APPENDIX F 29a

TABLE OF AUTHORITIES

Page

CASES

Baylis v. Travellers' Insurance Company,
133 U.S. 316 (U.S. Sup. Ct. 1885) 10

Cotran v. Rollings Hudig Hall International Inc.,
69 Cal.Rptr. 2d 900 (Cal. 1998) 12

Dairy Queen v. Wood,
369 U.S. 469 (U.S. Sup. Ct. 1962) 11

Edmonson v. Leesville Concrete Co.,
500 U.S. 614 (U.S. Sup. Ct. 1990) 11

Foley v. Interactive Data Corp.,
254 Cal.Rptr. 211 (Cal. 1988) 14

Hodges v. Easton,
106 U.S. 408 (U.S. Sup. Ct. 1882) 10, 11

Pugh v. See's Candies, Inc.,
250 Cal.Rptr. 195 (Cal. 1988) 14

Walker v. Blue Cross of California,
6 Cal.Rptr. 2d 184 (Cal. 1992) 13-14

Wallis v. Farmers Group, Inc.,
269 Cal.Rptr. 299 (Cal. 1990) 13

STATUTES AND RULES

Amendment VII of the Constitution of the
United States 2, 3, 9

Rule 38(a) of the Federal Rules of Civil Procedure 2, 9

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD D. SANDBERG, ALBERTA M. SANDBERG, DICK SANDBERG INSURANCE AGENCY, INC., a corporation,

Petitioners,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, et al.,

Respondents

Petition For Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

PETITION FOR WRIT OF CERTIORARI

Richard D. Sandberg, Alberta M. Sandberg, and Dick Sandberg Insurance Agency, Inc. ("Sandberg") respectfully petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS AND ORDERS BELOW

The opinion of the Court of Appeals is contained in the Appendix ("App.") at App. A, p. 1a. The Order and Judgment of the District Court is at App. B, p. 7a. The Order of the Court the of Appeals denying a petition for rehearing is at App. D, p. 26a).

BASIS OF JURISDICTION

The decision of the Court of Appeals was filed on May 13, 1999. (App. A, pp. 1a-6a.) On May 27, 1999, petitioners filed a timely petition for rehearing before the three judge panel of the Court of Appeals. (App. C, pp. 13a-25a.) Petitioners' request for a rehearing was denied by an order of the Court of Appeals that was filed on July 7, 1999. (App. D, p. 26a.) Pursuant to Supreme Court Rule 13.3, this Petition is being filed within 90 days from the date of the filing of the denial of the petition for rehearing.

The original basis of jurisdiction before the District Court was diversity jurisdiction under 28 U.S.C. 1332(a)(1).

CONSTITUTIONAL PROVISIONS, STATUTES, RULES, AND REGULATIONS INVOLVED

The federal constitutional provisions, statutes, rules, or regulations involved in this case are Amendment VII to the Constitution of the United States of America (App. E, p. 28a) and Rule 38(a) of Federal Rules of Civil Procedure (App. F, p. 29a).

STATEMENT OF THE CASE

This case involves the denial of the fundamental right of trial by jury for resolution of disputed factual issues. On motion for summary judgment before the District Court, the focus of the parties and the District Court was on the legal issue whether or not an agency agreement (between an exclusive agent and insurance company) required good cause for termination. After the District Court ruled that the agreement did not require good cause, that ruling was appealed to the Ninth Circuit, where, once again, the focus of the court and the parties was on the legal issue whether good cause for termination was required under the interpretation of contract language.

The Ninth Circuit overruled the District Court's decision, holding that the agency agreement did require good cause for termination. However, almost as an afterthought in its decision, the Ninth Circuit decided the factual issue of good cause in this case in holding that the insurance company's proffered reason for termination constituted good cause. It decided this issue even though the District Court never addressed this issue in its decision, and even though substantial evidence was in the record (before both the District Court and the Ninth Circuit) that clearly showed that the insurance company's proffered reason for termination was disputed by Sandberg.

Amendment VII of the Constitution of the United States provides constitutional protection for the right of trial by jury in a civil case. This Court has confirmed that this constitutional right is to be "guarded with jealousy" and that it is the duty of the Court of Appeals to preserve the right to trial by jury in the District Court. This Court in prior decisions has granted certiorari when the action of the Court of Appeals was inconsistent with the important constitutional right to trial by

jury. For that reason, a writ of certiorari is clearly warranted in this case.

RELEVANT FACTS AND COURSE OF PROCEEDINGS BELOW

This is a wrongful termination case that arises out of a longstanding dispute between respondent State Farm group of insurance companies ("State Farm") and their independent contractor agents. The agents, acting through a national association, have been contesting a variety of actions taken by State Farm over the past several years in connection with the agency agreements under which the parties operate. The agents claim, essentially, that State Farm is attempting to alter the basic contractual arrangements and convert the agents from independent contractors to controlled employees. The plaintiff petitioner in this action, Richard Sandberg, was a highly visible participant in this confrontation and founded the Southern California chapter of a national association that has been carrying on the battle. After State Farm terminated Sandberg's agency contract, the Southern California chapter went into decline.

Many State Farm agents have separately obtained personal insurance for themselves, personally from State Farm. As policyholders, these agents are treated just like other policyholders. There are no special terms or conditions. Richard Sandberg and his wife had a homeowners' policy with State Farm.

In April of 1994, the Sandbergs filed a policyholders' action against State Farm, arising out of State Farm's denial of a property damage claim they had submitted under their homeowners' policy. In their complaint, the Sandbergs alleged, among other things, that State Farm had been found, by a California court, to have violated California insurance

regulations during the 1980's in removing, from its homeowner policies, the type of coverage which the Sandbergs were seeking. The Sandbergs' homeowners' action was dismissed on the procedural ground that the statute of limitations had run. Immediately following that dismissal, State Farm terminated Richard Sandberg's agency agreement (in September of 1994), citing the filing of the homeowners' action as the reason. This action arises out of that termination.

The Sandberg's complaint in this action was filed September 19, 1995 in California State court and removed to federal court by State Farm. Following removal, Sandberg timely perfected his right for a jury trial under the District Court's rules.

The original complaint contained a variety of claims, which were eventually reduced to three: (1) breach of implied in-fact contract (whether "good cause" for termination is an implied condition of the agency agreement); (2) breach of the covenant of good faith and fair dealing (contractual); and (3) breach of State Farm's duty not to deprive Sandberg of the accumulated good will of his business by terminating without cause (this is a variant of the covenant of good faith and fair dealing, based on public policy considerations).

Shortly before the trial was to commence, State Farm moved for summary judgment with respect to all causes of action. The basis of its motion was its contention that its agency contract did not require "good cause" for termination, and, for that reason, it had the right to terminate the Sandberg agency for any reason upon notice.

In opposition to State Farm's motion, Sandberg contended that the agreement in fact required good cause for termination, and submitted substantial evidence (summarized below) that raised triable issues of fact as to whether State Farm's proffered reason for the termination (the homeowners'

action) was (1) pretextual, and (2) unrelated to a legitimate business reason; both of which issues are for factual resolution by a jury under applicable California decisional law. In this regard, Sandberg submitted declarations and deposition testimony (from other agents and State Farm managerial employees) that showed (or strongly indicated) that Sandberg had been terminated because of his active involvement with the National Association of State Farm Agents ("NASFA"), which is the agents' association that had been doing battle with State Farm.

The District Court granted the motion in its entirety on May 19, 1997 and entered a final judgment on May 31, 1997. (App B p. 7a). As this Court can surmise from the District Court's ruling, that decision was based solely upon its conclusion that State Farm's agency agreement, as a matter of law, did not require good cause for termination, and, for that reason, Sandberg's breach of contract theory failed.

Almost all of State Farm's moving papers and oral argument before the District Court were devoted to the "termination at-will" contract issue. As above noted, Sandberg, in opposing the motion, submitted substantial evidence that raised triable issues of fact (if good cause was required) as to whether State Farm's proffered reason for the termination (the homeowners' action) was pretextual, and/or related to a "legitimate business reason." Specific evidence submitted by Sandberg in opposition to State Farm's motion for summary judgment, which refuted State Farm's proffered reason for terminating Sandberg, and which was ignored by the Court of Appeal in its decision (discussed below), can be summarized as follows:

1. Deposition testimony from a State Farm regional vice-president that disclosed that State Farm was angry with Sandberg, not as a result of the homeowners' action and its prayer for punitive damages, but as a result of statements

Sandberg had made (disclosing misconduct by State Farm which could cost State Farm "millions of dollars");

2. Evidence that Sandberg was an active participant in the national agents' association (which State Farm vehemently opposed), and that State Farm had sought to terminate Sandberg, as well as other agents, for pretextual reasons, and that the real reason was to punish agents active in NASFA;

3. Deposition testimony from a member of Sandberg's termination review board that confirmed that it was the feeling of the people on the State Farm termination review board that the termination of Sandberg would "send a message" that "would affect the attitudes of a lot of agents";

4. Deposition testimony from one of the principal founders of NASFA, and a past president of NASFA, that confirmed, on "personal knowledge," that Sandberg's termination "was obviously designed to send a message to the Southern California chapter" (of NASFA), and that State Farm's plan succeeded because the termination "caused the chapter to disband, and it has never been able to regroup";

5. The testimony of Sandberg that he was terminated by State Farm for his activities with NASFA, and that State Farm used the homeowners' claim as a pretext.

The evidence Sandberg submitted, summarized above, showed that he was terminated either (1) because he had become an active member of an association of agents who were contesting State Farm's attempts to subvert their rights as agents or (2) because he asserted a claim as a policyholder which could alert policyholders who had the same claim (apparently there were many). Under the former, State Farm's proffered reason for the termination would be a pretext. Under the latter, State Farm's asserted reason would not have constituted a legitimate

business goal. Under either scenario, factual issues were clearly presented that had to be submitted to a jury for resolution.

State Farm did not present any evidence contesting Sandberg's evidentiary showing regarding the reasons for his termination, and the District Court's decision granting State Farm's motion did not make any findings (or even discuss) the issue of whether good cause existed in this case. As noted, the District's Court's decision was based entirely upon a legal conclusion that the agency agreement did not require good cause to terminate.

The District Court's decision was timely appealed to the Ninth Circuit. On appeal, the focus of the Appellate Court and the parties was, once again, on the interpretation of the contract language in the agency agreement to resolve the legal issue of whether good cause for termination was required under the agreement.

The Ninth Circuit overruled the District Court's decision. It squarely held that good cause was required for termination under the agents agreement, and almost all of its written decision was devoted to its legal analysis in this regard. However, on the last page of its decision, the Ninth Circuit decided the factual issue of good cause.

The Court concluded that the fact that Sandberg sought punitive damages in his homeowners' action established the requisite good cause for termination. (App. A, p. 5a). It decided this factual issue even though (1) the District Court had never addressed this issue, and (2) even though Sandberg, as summarized above, had submitted unrebutted substantial evidence that disputed the insurance company's proffered reason for termination. That evidence supported Sandberg's contention that State Farm's proffered reason (the claims in the homeowners' action) was (1) a pretext and/or (2) was not related to a legitimate business purpose.

Petitioners timely filed a petition for rehearing. (App. C, pp. 13a-25a.) Petitioners' request for a rehearing was denied by an order of the Court of Appeals filed on July 7, 1999. (App. D, pp. 26a-27a).

REASONS FOR GRANTING THE WRIT

THE DECISION OF THE NINTH CIRCUIT HAS CLEARLY VIOLATED PETITIONERS' CONSTITUTIONAL RIGHT TO HAVE DISPUTED FACTUAL ISSUES IN A CIVIL CASE DECIDED BY A JURY.

Amendment VII of the Constitution of the United States States:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law. (App. E, p. 28a.)

Rule 38(a) of the Federal Rules of Civil Procedure mandates that this constitutional right must be respected by the federal courts. Rule 38(a) provides:

> Rule 38, Jury Trial of Right
>
> (a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by statute of the United States shall be preserved to the parties inviolate. (App. F, p. 29a.)

As noted by this Court in Baylis v. Travellers' Insurance Company, 133 U.S. 316, at 321 (1885):

> This constitutional right this [Supreme] court has always guarded with jealousy.

Thus, a "court errs if it substitutes itself for the jury, and passing upon the effect of the evidence, finds the facts involved in the issue, and renders judgment thereon." Id. (reversing the Circuit Court of the United States for the Eastern District of New York, which entered a judgment "on its own view of the evidence, without the intervention of a jury").

The United States Supreme Court, while recognizing that there are qualifications to this privilege, held in Hodges v. Easton, 106 U.S. 408, at 412 (1882) that:

> In civil cases, other than those in equity and admiralty, and except where it is otherwise provided in bankruptcy proceedings, 'the trial of issues of fact'---that is, of all the material issues of fact---'in the Circuit Courts shall be by jury,' unless the parties, or their attorneys of record, stipulate in writing for the waiver of a jury.... It has been said by this court that the trial by jury is a fundamental guarantee of the rights and liberties of the people.

Reversing the Circuit Court of the United States for the Eastern District of Wisconsin, which failed to submit issues "triable by jury....to the jury in the mode required by law," the Hodges Court stated that it had "no alternative but to reverse the

judgment, with directions that a trial be had upon all the material issues of fact." Id. at 413.[1]

A Circuit Court of Appeals does not have a greater right to deprive a party of its constitutional right to jury trial than does a District Court. In fact, the Circuit Court of Appeals is required to preserve the right to jury trial in the District Courts. As confirmed by the Supreme Court in Dairy Queen v. Wood, 369 U.S. 469, 472 (1962), it is "the responsibility of the Federal Courts of Appeals to grant mandamus where necessary to protect the constitutional right to trial by jury." The Court in Dairy Queen further noted that where the Third Circuit denied a request to vacate a District Court judgment that did not preserve the right to trial by jury, the Supreme Court "granted certiorari because the action of the Court of Appeals seemed inconsistent with protections already clearly recognized for the important constitutional right to trial by jury in our previous decisions." (Id. at 470).

The Supreme Court certainly still respects these constitutionally-guaranteed principals. As noted by the 1990 United States Supreme Court decision in Edmonson v. Leesville Concrete Co. 500 U.S. 614, 624-624 (1990):

> In the federal system, the Constitution itself commits the trial of facts in a civil cause to the jury. Should either party to a cause invoke its Seventh Amendment right, the jury becomes the principal fact finder, charged with weighing the

---

[1] The Court in Hodges also held that even where the essential facts are undisputed, or if they so conclusively established the cause of action as to have authorized the withdrawal of the case altogether from the jury, "it would still have been necessary that the jury make its verdict, albeit in conformity with the order of the court." Id. at 412.

> evidence, judging the credibility of witnesses, and reaching a verdict. The jury's factual determinations as a general rule are final. [Citation omitted].

It is also clear under California law that if an employer's proffered reason for a termination is disputed, the issue of good cause must be submitted to a jury for factual resolution. On page 5 of the Ninth Circuit's decision (App. A, p. 5a), the Ninth Circuit, citing the California Supreme Court case of Cotran v. Rollings Hudig Hall International Inc., 69 Cal. Rptr. 2d 900, at 910 [17 Cal.4th 93] (1998), correctly sets forth the definition of "good cause" as:

> ....a fair and honest reason, regulated by good faith, that is not trivial, arbitrary or capricious, unrelated to business needs or goals, or pretextual.

Based upon this definition, the Circuit Court concluded that the fact that Sandberg sought punitive damages in his homeowners' action established good cause for termination. (See App. A, p. 5a).

In so holding, the Circuit Court overlooked the further holding of the California Supreme Court in Cotran that the cited definition (for good cause) is an "objective good faith standard" and that the question of whether the standard has been met is a factual inquiry directed to the jury. (Id. at 909-910). As stated by the court in Cotran:

> The proper inquiry for the jury, in other words, is not, 'Did the employee in fact commit the act leading to dismissal?' It is 'Was the factual basis on which the employer concluded a dischargeable act had been committed reached honestly, after an appropriate investigation and

> for reasons that are not arbitrary or pretextual?' (Id. at 909-910).

Other relevant California case law also makes it clear that if an employer's stated reason for a termination "for cause" is contested by a terminated employee (on the grounds of pretext, etc.) than the issue of good cause cannot be decided as a matter of law. As noted by the California Court of Appeal's decision in Wallis v. Farmers Group, Inc., 269 Cal.Rptr 299 [220 Cal.App.3d 718] (1990)(another insurance agent termination case):

> While we agree that the conflict of interest situation might have provided sufficient cause to justify Marcia's termination, we cannot declare so as a matter of law. If the evidence is uncontradicted and permits only one conclusion, then the issue (of good cause) is legal, not factual. (citation omitted). Where, however, as here, the evidence is contradicted, the issue is one for the trier of fact to decide. (Id. at 308)(emphasis added).

[See also Walker v. Blue Cross of California, 6 Cal. Rptr. 2d 184 [4 Cal.App.4th 885] (1992)---holding that the factual issue of "good cause" cannot be determined on motion for summary judgment when the proffered good cause reason is contested by the terminated employee as being a "pretextual basis for dismissal." (Id. at 189-191).]

In addition to the required factual inquiry by a jury with respect to the "good cause issue", California courts have also recognized that a factual inquiry is required to determine if an employer's stated reason for a termination (where good cause is required) was in fact related to a legitimate business reason; even if the employer's proffered reason for termination is not disputed by the terminated employee. [See Walker v. Blue

Cross of California, supra, at 189-191--- confirming that lack of good cause can be established not only by a "pretext claim", but also, by a contention that the asserted good cause reason is in reality unrelated to legitimate "business needs or goals."; see also Pugh v. See's Candies, Inc., 250 Cal.Rptr. 195 [203 Cal.App.3d 743] (1988)---holding same, and Foley v. Interactive Data Corp., 254 Cal.Rptr. 211 [47 Cal.3d 654] (1988)---holding that if a contract is terminable only for good cause, the employer has no right to terminate for an arbitrary or unreasonable reason.]

The Ninth Circuit concluded that the fact that Sandberg sought punitive damages in his homeowners' action established the requisite good cause for termination. That conclusion overlooked the material facts summarized above going to the issue of (1) pretext and (2) legitimate business purpose, which are clearly jury questions under applicable law.

CONCLUSION

The petitioner has clearly been deprived of the fundamental constitutional right of trial by jury in a civil case. This Court has confirmed that this constitutional right is to be "guarded with jealousy", and that it is the duty of the Court of Appeals to preserve the right to trial by jury in the District Courts. This Court in prior decisions has granted certiorari when the action of the Court of Appeals was inconsistent with this fundamental constitutional right.

For these reasons, petitioners respectfully submit that a writ of certiorari should be granted in this case.

DATED: October 7, 1999

Respectfully submitted:

JEFFREY T. WILBER,
44 Montgomery Street
Suite 500
San Francisco, CA 94101
(415) 398-2235

Attorney for Petitioners
Richard D. Sandberg,
Alberta M. Sandberg,
and Dick Sandberg
Insurance Agency, Inc.

WILLIAM P. TEDARDS, JR.
1101 30th Street, N.W.
Suite 500
Washington, D.C. 20007
(202) 797-9135

Attorney for Petitioners
Richard D. Sandberg,
Alberta M. Sandberg,
and Dick Sandberg
Insurance Agency, Inc.